269

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924~~5~~

No. ~~262~~ 29

THE UNITED STATES, APPELLANT,

vs.

BOSTON INSURANCE COMPANY

APPEAL FROM THE COURT OF CLAIMS

INDEX

24548—24

1 In Court of Claims of the United States

BOSTON INSURANCE COMPANY, (a corporation) *vs.* THE UNITED STATES.	No. B–166

I. *Petition and amended petition*

Filed July 31, 1923

On August 2, 1922, the plaintiff filed its original petition.

Subsequently, to wit, on July 31, 1923, by leave of court, the plaintiff filed its amended petition. Said amended petition is as follows:

AMENDED PETITION

To the Honorable the Court of Claims:

The claimant in the above-entitled cause respectfully represents to this honorable court:

I

The claimant is a corporation duly organized and existing under the laws of the State of Massachusetts, having its principal office in the city of Boston, in said State, and is now and has been continuously engaged since 1908, and long prior thereto, in the business of making and selling fire and marine insurance in the States of Massachusetts, New York, and other States of the United States.

II

The claimant has complied with all the laws of the States of Massachusetts and New York, and the rules and regulations of the respective State insurance departments, prescribing the conditions upon which it was allowed to transact the business of fire and marine insurance within said States during all of the years from 1908 to 1916, inclusive, and continuously thereafter.

III

2 The claimant, because of its transacting the business of insurance within the territory of the United States during the year 1916, became and was subject to the provisions of the act of Congress entitled "An act to increase the revenue, and for other purposes," approved September 8, 1916 (39 U. S. Stat. L. 756), and did in the year 1917 duly file its income tax return for the year 1916, under said act of Congress.

IV

The defendants on May 4, 1917, assuming to act under the provisions of said act of Congress, unlawfully assessed and demanded of claimant an income tax for the year 1916 in the sum of $3,982.00, which claimant paid, involuntarily and under written protest, on June 15, 1917; and defendants did on December 8, 1917, assuming to act under the provisions of the said act of Congress, unlawfully assess and demand of claimant a further additional income tax for the year 1916, in the sum of $16,790.65, which further sum claimant paid, involuntarily and under written protest, on December 18, 1917.

V

On April 30, 1920, claimant duly filed with the Commissioner of Internal Revenue of the United States, in accordance with the statutes in such case made and provided, a claim for the refunding of $20,772.65, for the income tax theretofore claimed to have been illegally collected from it by the defendants for the year 1916.

VI

Claimant's refunding claim was, on January 28, 1922, rejected by the Commissioner of Internal Revenue of the United States in the sum of $8,755.92, the letter of rejection stating, among other things, as follows:

"The only change to be made in the receipts and disbursements basis is relative to losses realized from a sale of capital assets which is shown in the statement below. The return has been adjusted on an accrual basis for the reason that this bureau has recently held that returns of stock, fire and marine insurance companies for 1916 and subsequent years, shall be rendered on an accrual basis, on the ground that such basis is in accordance with the method of accounting regularly employed by such companies, and that such basis clearly reflects the income of stock, fire and marine insurance companies. * * * Your claim will therefore be allowed for $12,016.73 and rejected for $8,755.92, in the next schedule to be approved by the commissioner."

VII

The assessment and collection of that part of the income tax for the year 1916, amounting to $8,755.92, not refunded to claimant under its refunding claim, was unlawful for the following reasons:

(1) Claimant was required by the superintendent of insurance for the State of New York, under appropriate power conferred upon him by statute (Chapter 28 of the Consolidated Laws of New York, and particularly sections 2, 9, 25, and 32), to maintain and did maintain for the years 1915 and 1916, reserve funds covering its unsettled liabilities arising from losses under its policies of insurance outstanding December 31, of each of said years, respectively. The net addi-

tion to such reserve funds required as aforesaid of claimant within the year 1916, and maintained by it, amounted to $560,678.43.

(2) The claimant was entitled to deduct from its gross income, in determining its net income under said act of Congress, approved September 8, 1916 (Section 12. Second. (c)), the net addition, if any, required by law to be made within the year to its reserve funds, the specific language of the statute being as follows:

"in the case of insurance companies, the net addition, if any,
4 required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts."

(3) The defendants, in computing claimant's net taxable income for the year 1916, did not, and unlawfully refused to, deduct from claimant's gross income the net addition required by the order and direction of the superintendent of insurance of the State of New York to be made by claimant during the year 1916, to its reserve funds covering its unsettled liabilities arising from losses under its policies of insurance then outstanding, and unlawfully refused to correct such error when requested to do so in claimant's refunding claim, notwithstanding that in said refunding claim claimant, among other things, specifically requested the deduction from gross income of the net addition to its reserve funds covering "loss claims." ("Loss claims reserves," in insurance parlance, means the reserve maintained under the order of the superintendent of insurance covering unsettled liabilities arising from losses under its policies of insurance.)

(4) The defendants, in computing claimant's net taxable income for the year 1916, deducted from gross income its losses arising under its policies of insurance during the year 1916, exclusive of $14,937.81, the amount of losses which had occurred but had not been reported to the company during said year, but failed and refused to deduct $736,007.91 of the losses paid by claimant under its policies of insurance during said year, notwithstanding that claimant asked in its said refunding claim for the benefit of all deductions from gross income to which it was legally entitled.

VIII

The defendants' failure and refusal to deduct from claim-
ant's gross income for the year 1916 the net addition to its
5 reserve funds required by law and made within the year covering its unsettled liabilities arising from losses under its policies of insurance outstanding December 31, 1916, amounting to $560,678.43, and $736,007.91 paid during said year on account of losses arising under its policies of insurance as heretofore set forth, unlawfully increased claimant's taxable income upon which its income tax was assessed for the year 1916 and unlawfully increased the income tax assessed thereon by defendants and demanded by defendants of claimant and involuntarily paid by the claimant under written protest for the said year, in the sum of $8,755.92.

IX

Claimant further avers that it is and has been the owner of the claim hereinbefore set forth continuously from its inception, and has never sold or assigned the same or any part thereof or interest therein; that claimant is justly entitled to the amounts herein claimed from the United States, after allowing all just credits and off-sets; that claimant is a citizen of the United States, and has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, or aided or abetted or given encouragement to its enemies, and claimant believes that the facts stated herein are true.

X

Claimant, therefore, prays judgment against the United States for the sum of $8,755.92, and interest thereon from December 18, 1917.

BOSTON INSURANCE COMPANY,
By SERVEN, JOYCE & BARLOW,
Its Attorneys.

By A. R. SERVEN.

6 [Jurat showing the foregoing was duly sworn to by A. R. Serven omitted in printing.]

7 II. *General traverse*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. *Argument and submission of case*

On October 17, 1923, this case was argued and submitted on merits by Mr. A. R. Serven, for the plaintiff, and by Messrs. Fred K. Dyar and Forrest D. Siefkin, for the defendant.

8 IV. *Findings of fact, conclusion of law (as amended on the court's own motion Nov. 19, 1923), and opinion of the court by Booth, J.*

Entered Nov. 5, 1923

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT

I

Plaintiff is a corporation duly organized and existing under the laws of Massachusetts, one of the States of the United States, having its principal office in the city of Boston, in said State, and is now and

has been continuously engaged since the year 1908, and long prior thereto, in the business of making and selling fire and marine insurance in the States of Massachusetts, New York, and other States of the United States.

II

Plaintiff duly complied with all of the laws of the State of New York prescribing the conditions upon which it was allowed to transact the business of selling fire and marine insurance within said State, and was issued annual licenses by the superintendent of insurance of the State of New York duly authorizing it to transact its said business of insurance within said State for the respective years of 1915, 1916, and 1917, and plaintiff did transact said business within said State during each of said years.

III

Plaintiff duly filed with the Commissioner of Internal Revenue of the United States its income-tax return for the year 1916, in accordance with the instructions and forms furnished by the said commissioner therefor, and on June 15, 1917, paid the tax assessed thereon in the amount of $3,982, under written protest.

9 IV

On December 8, 1917, defendant assessed against said plaintiff a further additional income tax for the year 1916, in the sum of $16,790.65. This further sum plaintiff paid December 18, 1917, under written protest.

The payment of both of said taxes was made under specific protest, setting out in detail the basis of and reason for such protest.

V

On April 30, 1920, the plaintiff duly filed with the Commissioner of Internal Revenue of the United States, in accordance with the statutes in such case made and provided, claim for the refund of $20,772.65 for the income tax theretofore claimed to have been illegally collected from it by the defendant for the year 1916 in the sums of $3,982 and $16,790.65, respectively. Said claim for refund was allowed for $12,016.73 and rejected for $8,755.92 under date of January 28, 1922.

The items in the schedules of liabilities under the heading "Losses and claims for losses," in the printed reports of the New York State insurance department relating to plaintiff's business for the years 1915, 1916, and 1917, do not include any estimates or allowances for plaintiff's expenses in the adjusting of such outstanding losses.

VI

The failure and refusal of the Commissioner of Internal Revenue to treat as reserve funds required by law the funds held, set aside, and retained by plaintiff in the amount and on account of its liabili-

ties for unsettled loss claims and to deduct from plaintiff's gross income the net addition to such funds during the year 1916, amounting to $560,678.43, resulted in the rejection of $8.755.92 of the amount requested to be refunded in plaintiff's said refunding claim. Plaintiff in this suit is seeking to recover the amount so rejected with accrued interest thereon.

The net addition of $560,678.43 was obtained by deducting the reserve for loss claims plaintiff was required to maintain on December 31, 1915, $775,900.10, as a condition precedent to the transaction of business in the State of New York for 1916 from the reserve fund plaintiff was required to maintain on December 31, 1916, $1,336,578.53, as a condition precedent to the transaction of business in 1917 in the State of New York.

VII

The material provisions of the New York insurance law in effect during the years 1915 and 1916 (Parker's New York Insurance Law) are as follows:

"Sec. 2. The superintendent of insurance

"There shall continue to be a separate and distinct department charged with the execution of the laws relating to insurance, to be known as the insurance department, the chief officer of which shall be the superintendent of insurance, who shall be appointed by the governor, by and with the advice and consent of the senate, and, unless appointed to fill a vacancy, shall hold his office for the term of three years, beginning on the first day of July succeeding his appointment, and ending on the first day of July in the third calendar year thereafter; * * *."

"Sec. 9. Certificate of authorization of superintendent

"No corporation, nor any individual, as principal, shall transact the business of insurance within this state without the certificate of the superintendent of insurance, certifying under his hand and official seal that such corporation or individual has complied with all the requirements of law to be observed by such corporation or individual and that such corporation or individual is authorized to transact the business of insurance specified therein in this state. Such certificate shall be recorded in the office of the superintendent in a book to be kept by him for that purpose. No corporation or individual shall transact in this state any insurance business not specified in the certificate of authority granted by the superintendent. The superintendent may refuse to issue any such certificate to a domestic or foreign corporation, if, in his judgment, such refusal will best promote the interests of the people of the state. Nothing in this section contained shall apply to any insurance company organized prior to the first day of October, eighteen hundred and ninety-two, under any general or special law of this state and

carrying on business on said date, but every such corporation is hereby recognized as an existing corporation and is hereby authorized to continue as such corporation and to continue such business until the legislature shall otherwise provide, subject to such of the provisions of this chapter as are made applicable to such corporations."

"Sec. 25. Jurisdiction of superintendent over foreign corporations

"The superintendent of insurance shall have the same supervision and make the same examination of the business and affairs of every foreign insurance corporation doing business in this state, as of domestic insurance corporations, doing the same kind of business, and of its assets, books, accounts, and general condition. Every such foreign corporation and its agents and officers shall always be subject to and be required to make the same statements and answer the same inquiries and be subject to the same examinations, and, in case of default therein, to the same penalties and liabilities as domestic insurance corporations doing the same kind of business, or any of the agents or officers thereof, are or may be liable to under the laws of this state or the regulations of the insurance department.

"The superintendent may, whenever he deems it necessary, either in person or by a proper person appointed by him, repair to the general office of such foreign corporation, wherever the same may be, and make an investigation and examination of its affairs and condition. He may cancel and revoke the certificate of any such
11 foreign corporation refusing or unreasonably neglecting to comply with the provisions of this section, or to allow the examination herein provided for to be made, and prevents such corporation from further continuance in business in this state.

"A foreign insurance corporation may transact in this state only such kind of business as, under the laws of this state, a like domestic insurance corporation is authorized to transact.

"No such corporation shall transact any business in this state not specified in the certificate of authority granted by the superintendent."

"Sec. 32. Renewal of certificate of authority; revocation

"The certificate of authority granted by the superintendent of insurance, pursuant to the provisions of this chapter, to a foreign insurance corporation to do business in this state, shall not remain in force for longer period than one year, and all such certificates shall expire on the thirtieth day of April of the next year following the date of issue. The statements and evidences of investment required by this chapter to be filed in the office of the superintendent before a certificate of authority is granted to a foreign corporation, shall be renewed from year to year, in such manner and form as the superintendent may require, with an additional statement of the amount of premiums received and losses sustained in this state dur-

ing the preceding year so long as such authority continues. If the superintendent is satisfied that the capital, securities, and investments remain secure, and that it may be safely intrusted with a continuance of its authority to do business, he shall grant a renewal of such certificate of authority. Whenever in the judgment of the superintendent of insurance it will best promote the interests of the people of this state, he may, after a hearing on notice, revoke the certificate of authority of a foreign corporation to do business in this state, prior to its expiration under this section. The action of the superintendent of insurance in revoking the certificate of authority of a foreign corporation shall be subject to review by writ of certiorari."

"Sec. 44. Reports of corporations

"Every corporation, engaged wholly or in part in the transaction of the business of insurance in this state, whether heretofore or hereafter incorporated by a general or special law, shall annually, on the first day of January, or within two months thereafter, if a corporation under article two of this chapter, and on or before the fifteenth day of February, if a corporation under the other articles of this chapter, file in the office of the superintendent of insurance a statement verified by the oath of at least two of the principal officers of such corporation, showing its condition on the thirty-first day of December then next preceding which shall be in such form and shall contain such matters as the superintendent shall prescribe. If a foreign corporation incorporated under the laws of a state or country outside of the United States such oath may be made by the manager thereof within the United States.

12 "Sec. 45. Forms of report to be furnished by superintendent

"The superintendent shall cause to be prepared and furnished to every corporation required by the provision of this chapter to report to him, printed forms of the reports and statements required of such corporations. He may make such changes from time to time in the forms of the same as shall seem to him best adapted to elicit from such corporations a true exhibit of their condition in respect to the several matters which they are required to report, or in respect to any other matters which he may deem material."

"Sec. 118. Allowance of assets and estimation of liabilities upon examinations

"When an examination is made by the authority of the superintendent of insurance into the affairs of any fire insurance corporation doing business in this state, or when such corporation renders a statement to the insurance department, there shall not be allowed as assets any investments which are not held as prescribed by law

at the date of such examination or rendering such statement but unpaid premiums on policies written within three months shall be admitted as available resources. In estimating its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premiums on the policies in force, calculated on the gross sum without any deduction on any account, charged to the policyholders on each respective risk from the date of the issue of the policy. * * *"

VIII

The superintendent of insurance for the State of New York during the years 1915, 1916, and 1917 required stock, fire, and marine insurance companies, and stock, casualty, surety, and credit insurance companies, as a condition precedent to the transaction of business in the State of New York, to maintain reserves to cover the following liabilities:

"Stock, fire, and marine insurance companies

"A. Loss reserve, including all unpaid losses and estimated expense of investigations and adjustment thereof, less admitted reinsurance.

"B. Reserve for unearned premiums as required by statute and departmental regulations, i. e. (*a*) on fire insurance risks a sum equal to the actual unearned premium on the policies in force calculated on the gross sum without any deduction except for admitted reinsurance, and (*b*) on marine hull risks calculated in the same manner and on marine cargo risks 100 per cent of the last month's gross premium writings.

"C. Reserve for all other outstanding liabilities due or accrued.

"Stock, casualty, surety, and credit insurance companies

"A. Loss reserve, including all unpaid losses and estimated expense of investigation and adjustment thereof, whether on account of compensation and liability insurance or otherwise, less admitted
13 reinsurance, and such additional contingent reserves for losses as may be required by the superintendent of insurance.

"B. Unearned premium or reinsurance reserve calculated as required by statute and all premiums paid in advance at 100 per cent.

"C. Reserve for all other outstanding liabilities due or accrued."

IX

There are no printed publications containing the rules and regulations of the superintendent of insurance for New York State, but there are such rules and regulations kept at the insurance department which are prescribed in forms sent out to and used by insurance companies in their reports.

X

The funds to meet the liabilities of insurance companies were not required by the superintendent of insurance to be kept separate and distinct from other assets of such companies, but such funds were required to be separately specified by book entries as (1) reserves to meet liabilities for unearned premiums and (2) unpaid loss claims and (3) all other outstanding liabilities, due or accrued. All companies were required to have on hand at all times sufficient assets to meet all their liabilities.

XI

The books of the plaintiff company were kept on the written or accrued basis, and its reports to State insurance departments where it carried on business were made on the same basis. Its liabilities were stated separately in such reports and were all designated as liabilities and not as reserves. Plaintiff's returns to the Commissioner of Internal Revenue were made on the cash basis until 1920, when the commissioner, on the authority of section 13 of the act of September 8, 1916, 39 Stat. 771, issued regulations requiring returns to be made on the written or accrued basis beginning with the year 1916, and thereafter plaintiff's returns theretofore filed were amended by officials of the Internal Revenue Bureau so as to conform to the written or accrued basis.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is entitled to recover $8,755.92 with interest. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of eight thousand seven hundred and fifty-five dollars and ninety-two cents ($8,755.92), with interest at the rate of six per cent per annum from December 8, 1917, to November 5, 1923.

OPINION

BOOTH, *Judge*, delivered the opinion of the court:

The plaintiff insurance company is a Massachusetts corporation engaged in writing fire and marine insurance. Among other States in which it transacts business is the State of New York, and in order to do so it must comply with the laws of New York relating to a foreign insurance company seeking to write insurance in that
14 State. This the plaintiff did. It acceded to all the requirements exacted of it by the superintendent of insurance and did a large volume of business within that State.

The plaintiff company filed with the Commissioner of Internal Revenue its income-tax return for the year 1916, and on June 15, 1917, paid under protest the tax assessed thereon, amounting to $3,982. Subsequently, on December 8, 1917, the commissioner as-

sessed against the company an additional income tax on the previous return filed of $16,790.65, and on December 18, 1917, this additional tax was paid under protest. On April 30, 1920, plaintiff filed with the commissioner a claim for a refund of the entire sum, viz, $20,772.65, paid as aforesaid, asserting a right thereto under the law. The commissioner refunded $12,016.73 of the tax and rejected the refund claim as to $8,775.92, and it is for the recovery of this sum that the present suit is brought.

The superintendent of insurance of the State of New York exacted of the plaintiff the maintenance of a net addition to its reserve funds of $560,678.43 on account of its liability for unsettled loss claims for the year 1916, and it is stipulated that said sum was duly added by the plaintiff to meet the requirement. The commissioner treated said net addition to reserve funds as income for the calendar year and assessed and collected the sum herein claimed as an income tax lawfully due thereon.

Section 12 of the revenue act of September 8, 1916, 39 Stat. 765, in subsection (c) provides in the following language for a deduction from the gross income of insurance companies organized in the United States, of "the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts." The defendant relied upon the above statute for authority to proceed as it did.

The one question, and the only one properly raised, is whether, within the meaning and intent of the Federal revenue act, the net additions so made by the plaintiff to its reserve funds in pursuance of the requirements of the superintendent of insurance for New York, to cover accrued but unsettled loss claims, may be said to be such a fund as comes within the meaning of "reserve funds," as those terms appear in the revenue act.

The defendant does not dispute that the sum involved was reserved, nor that it was required by the proper insurance authorities of New York to be reserved. Defendant's argument is predicated upon an assertion that Congress in exempting net additions to reserve funds, clearly intended to exempt only such funds as are technically known and universally understood in the insurance world as reserve funds, and as thus understood the terms have a well defined, limited, and certain status and meaning. We may well grant the contention, but apparently it furnishes no solution for the issue, unless we may find some authoritative decision that unsettled loss claims are not within the meaning of "reserve funds," as thus contended for.

Mr. Justice Clarke, in the case of Maryland Casualty Co. v. United States, 251 U. S. 342, 350, defines the terms "reserve" and "reserves," and the definition therein given was elicited by a contention in all respects similar to the one now at issue. "The term 'reserve' or 'reserves' has," he says, "a special meaning in the law of insurance. While its scope varies under different laws, in general it means a sum of money, variously computed or esti-

mated, which, with accretions from interest, is set aside, 'reserved,' as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, future unaccrued and contingent claims, but contingent and indefinite as to amount or time of payment." In that case, and following the definition thus announced, the Supreme Court did include a loss claims item as part of the reserve required by law to be maintained by the insurance company.

It is true that the insurance laws of New York did not expressly require that such a reserve be maintained, but the regulations of the superintendent of insurance of that State, in pursuance of a most general and plenary authority so to do, did exact it, and disobedience of the insurance laws precluded the conduct of any insurance business in the State by a foreign insurance company. In the Maryland Casualty Co. case, just cited, the Supreme Court decided that regulations of a department of a State government, adapted to the enforcement of an act of that State, had the force and effect of law.

It is difficult, indeed, in view of the above decision, or upon any other logical hypothesis, to exactly comprehend any reason for excluding loss claims items from a legal reserve under the section of the revenue act heretofore quoted. Congress, of course, intended to tax the net income of the insurance company, and in providing exemptions from its gross income was especially concerned with relieving from the tax burden the sums of money or assets of the company which it was obligated by law to set aside as a guaranty and protection to its policyholders. There was manifestly no difficulty in arriving at fixed expenditures and disbursements actually made by the company, but contingent liabilities, contingent claims and payments of same, an inseparable concomitant of the business itself, was the problem Congress was seeking to solve. If a sum of money had to be set aside and reserved out of gross income to meet a contingent liability it was an act of obvious fairness to treat that sum as exempt from the computations to ascertain net income until the contingency ceased to exist and the liability was discharged. As said in the Maryland Casualty Co. case, supra, when the reserves are released "to free beneficial use of the company in a real, and not a mere bookkeeping sense," they are income.

A loss claims reserve is the setting aside of a sufficient sum or assets of the insurance company to assure the final liquidation of losses not yet reported and to be adjusted. The final payment of a loss depends upon a variety of circumstances. It may be a partial or a total loss; it may involve a contest extending over a long period of time, and many other contingencies may intervene which necessarily require adequate protection for the loser, that in the end his loss, whatever it is, may be made good under the terms of his policy. Assuredly loss claims are to be classified as a liability of the company. For what other purpose are reserves demanded, other than as an assurance against a liability? In this respect the situation is not essentially different from an unearned premium reserve. An insurance company receives a large sum of money as paid premiums upon its policies. When the premiums are paid con-

tingent liability under the policies attach, and the defendant
16 concedes that a reserve of sufficient proportions to cover re-insurance in the event of insolvency is within the meaning and intent of reserves as that term appears in the revenue act. In loss claims there is a distinct contingency as to amount, and in an unearned premium reserve the contingency is as to time, both furnishing protection to the patrons of the company. The technical reserves required under the law do not in every instance furnish permanent immunity from income taxation. This is clearly demonstrated in the Maryland Casualty Co. case, and whatever the result the statute accords the right.

In deciding the oft-quoted Maryland Casualty Co. case the Supreme Court had before it this identical issue, and it was there determined that as to casualty insurance loss claims were clearly within the meaning and intent of Congress when the twelfth section of the revenue act was enacted. It is true this plaintiff is a fire and marine insurance company, but the reason given for the result in the Maryland Casualty Co. case is not made to depend upon the character of the insurance written, and we can not escape the conclusion that the decision is as applicable here as it was under the facts of the case mentioned.

Where a general law covering a particular purpose confides to a supervising official administration thereof, and in pursuance of said law the supervising official issues regulations in keeping with the same, the regulatons so issued have the force of positive law. This has been repeatedly held in numerous decisions of the Supreme Court and made applicable to a department of a State government in the Maryland Casualty Co. case.

The insurance law of the State of New York, applicable, excerpts from which are set out in the findings, does not in any express provision require a reserve for loss claims; neither does it enter into detail with respect to any other character of reserve. Regulations of the superintendent of insurance duly promulgated by him cover the subject, and expressly require a reserve for loss claims, in both fire and casualty insurance. The highest court of New York in 91 N. Y. 385 has construed the law, and by its terms, as thus construed and interpreted, the plaintiff's right to transact business within the State depended absolutely upon its observance of the same. While regulations of the insurance department by designating certain sums as reserves may not thereby entitle a company to the deductions mentioned in the revenue act, and must observe the plain distinction between reserves as understood in insurance business and the general assets of the company, nevertheless we believe it is made quite clear in the Maryland Caualty Co. case that a reserve for loss claims falls within the revenue act, and the plaintiff is entitled to a deduction for the net additions made to this reserve for the year 1916.

Judgment for plaintiff company in the sum of $8,755.92. It is so ordered.

GRAHAM, Judge; HAY, Judge; DOWNEY, Judge, and CAMPBELL, Chief Justice, concur.

17 V. *Judgment*

At a Court of Claims held in the city of Washington on the 5th day of November, A. D. 1923, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of eight thousand seven hundred and fifty-five dollars and ninety-two cents ($8,755.92), with interest at the rate of six per cent per annum from December 8, 1917, to November 5, 1923.

By the Court.

VI. *Defendant's application for appeal*

Filed January 7, 1924

From the judgment rendered in the above-entitled cause on the 5th day of November, 1923, in favor of the claimant, the defendants, by their Attorney General, on the 7th day of January, 1924, make application for, and give notice of, an appeal to the Supreme Court of the United States.

Robert H. Lovett,
Assistant Attorney General.

VII. *Order of court allowing defendant's application for appeal*

Entered January 14, 1924

It is ordered by the court that the defendant's application for appeal be and the same is allowed.

18 In Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true copies of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and opinion of the court by Booth, J.; of the judgment of the court; of the defendant's application for appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this seventeenth day of January, A. D. 1924.

[seal]

F. C. Kleinschmidt,
Assistant Clerk, Court of Claims.

c (Indorsement on cover:) File No. 30,071. Court of Claims. Term No. 262. The United States, appellant, vs. Boston Insurance Company. Filed January 21st, 1924. File No. 30,071.

○

No. 28

In the Supreme Court of the United States

October Term, 1945

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 29

THE UNITED STATES, APPELLANT

v.

BOSTON INSURANCE COMPANY

APPEAL FROM THE COURT OF CLAIMS

STIPULATION OF ADDITIONAL FACT OR ALTERNATIVE MOTION TO REMAND TO THE COURT OF CLAIMS FOR FURTHER FINDINGS OF FACT

The parties hereto by their respective counsel represent that—

I

This cause involves the construction and application of the Revenue Act of 1916, Ch. 463, 39 Stat. 765, in respect to the following sections:

> SECTION 10. That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company organized in the United States, no matter how created or organized, but not including partner-

ships, a tax of two per centum upon such income; * * *.

SECTION 12. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources—

First. All the ordinary and necessary expenses paid within the year. * * *

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for exhaustion, wear and tear of property arising out of its use or employment in a business or trade; * * *.

(c) In the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts. * * *

II

The case arose by reason of an adjustment of appellant's tax return for the year 1916, by which the Commissioner of Internal Revenue refused to treat as "Reserve Funds Required by Law" the amounts reported by appellee on account of its liabilities for unsettled loss claims and a consequent refusal of the Commissioner of Internal Revenue

to allow as a deduction from gross income the sum of $560,678.43, constituting the net addition to its liabilities reported by appellee on account of unsettled loss claims.

III

The decision of the Court of Claims, below, holds that this net addition made by the claimant to its so-called "reserve funds" in pursuance of the requirements of the Superintendent of Insurance for New York, to cover unsettled loss claims, constitutes such a fund as to fall within Section 12 (c) above. The appellant contests this decision.

IV

If the decision of the Court of Claims is affirmed, a double deduction in the amount of $560,678.43 from gross income for the year 1916 will have resulted to the appellee.

The Court of Claims' Finding of Fact No. XI is as follows:

> The books of the plaintiff company were kept on the written or accrued basis, and its reports to State insurance departments, where it carried on business, were made on the same basis. Its liabilities were stated separately in such reports and were all designated as liabilities and not as reserves. Plaintiff's returns to the Commissioner of Internal Revenue were made on the cash basis until 1920, when the commissioner, on the authority of section 13 of the act of

September 8, 1916, 39 Stat. 771, issued regulations requiring returns to be made on the written or accrued basis beginning with the year 1916, and thereafter plaintiff's returns theretofore filed were amended by officials of the Internal Revenue Bureau so as to conform to the written or accrued basis.

In the Court below the facts were in part stipulated by the parties. Among the stipulated facts was the following:

> V. On April 30, 1920, claimant duly filed with the Commissioner of Internal Revenue of the United States, in accordance with the statutes in such case made and provided, claim for the refund of $20,772.65 for the income tax theretofore claimed to have been illegally collected from it by the defendants for the year 1916, in the sums of $3,982 and $16,790.65, respectively. A copy of this claim for refund is annexed hereto (marked "Exhibit 6"), and made a part hereof by reference. Said claim for refund was allowed for $12,016.73 and rejected for $8,755.92, under date of January 28, 1922. A copy of letter advising claimant concerning this allowance in part and rejection in part is annexed herewith (marked "Exhibit 7") and made a part hereof by reference. In the adjudication referred to by said letter, the only net addition to reserve funds deducted from gross income in the computation of taxable income was the net addition to unearned premium reserve funds.

> In this adjudication, the accrued policy losses for the year 1916, exclusive of the losses incurred but not reported, were deducted from gross income in arriving at claimant's net income.
>
> The items in the schedules of liabilities under the heading: "Losses and claims for losses," in the printed reports of the New York State Insurance Department relating to claimant's business for the years 1915, 1916, and 1917 do not include any estimates or allowances for claimant's expenses in the adjusting of such outstanding losses.

Both parties below, in their request for Findings of Fact, include stipulated Fact V above.

Wherefore, respective counsel move this Court to accept and consider the facts here stipulated to the same extent as if so found by the Court of Claims, or in the alternative to remand the cause to that court with directions to amend its Findings of Fact XI to conform to this stipulation, and to the common request of the parties below to the end that said Finding XI of the Court of Claims will have added thereto the following sentence:

> In this adjudication, the accrued policy losses for the year 1916, exclusive of the losses incurred but not reported, were deducted from gross income in arriving at the claimant's net income. These accrued policy losses so deducted included losses represented by the sum of $560,678.43, the net addition made by claimant during the

year 1916 to its loss claims reserve fund, as required by the Superintendent of Insurance of the State of New York, which is the amount of deduction here in dispute.

WILLIAM D. MITCHELL,
Solicitor General.

A. R. SERVEN,
Counsel for Appellee.

STATEMENT

The purpose of the foregoing stipulation is to place before this Court a specific finding of fact upon which to rest the appellant's argument that the Congress did not intend, by this act, to allow such double deduction.

While it may be argued that Fact XI as found by the Court of Claims of necessity implies the deduction of claimant's "accrued losses" for 1916, since it states that the tax returns of claimant had been adjusted to conform to the accrued method of accounting, the said Finding XI fails to set out the specific fact which was stipulated and requested by both parties below.

It is represented by the United States that the possible prejudicial effect of the omission of this specific finding of fact in respect to one of appellant's contentions in this cause only now has been appreciated by the appellant. Therefore, unless this Court will accept this stipulation, the remand of this case to the Court of Claims for the purpose of having the specific fact added to the Finding

of Fact XI is deemed necessary to the proper presentation of the Government's cause.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

A. R. SERVEN,
Counsel for Appellee.

SEPTEMBER, 1925.

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